

MAY 30 1997

**Federal Communications Commission
Office of Secretary**

Federal Communications Commission

WASHINGTON, D.C. 20554

(

1

1

1

1

1

;

—

1

To: The Commission

THE NATIONAL RURAL TELECOMMUNICATIONS COOPERATIVE

Pursuant to Section 1.415 of the Rules and Regulations of the Commission, the National Rural Telecommunications Cooperative ("NRTC"), by its attorneys, hereby submits these Reply Comments in response to Further Comments filed in the above-captioned proceeding. As the Commission has recognized, DBS is a nascent, developing technology that only recently has begun to compete seriously with the entrenched cable industry. NRTC agrees with those Commenters urging the Commission to permit DBS providers maximum latitude in meeting any new public service obligations.

1. NRTC is a non-profit cooperative association comprised of 521 rural electric cooperatives and 231 rural telephone systems located throughout 48 states.

No. of Copies rec'd.
List ABCDE

079

NRTC's mission is to assist its members and affiliates in meeting the telecommunications needs of more than 60 million American consumers living in rural areas. Through the use of satellite distribution technology, NRTC is committed to extending the benefits of information, education and entertainment programming to rural America -- on an affordable basis and in an easy and convenient manner -- just as those services are available in more populated areas of the country. In short, NRTC seeks to ensure that rural Americans receive the same benefits of the information age as their urban counterparts.

2. In 1992, NRTC entered into an agreement with Hughes Communications Galaxy, Inc., the predecessor in interest to DirecTV, Inc. to launch the first high-powered DBS service offered in the United States. NRTC members and affiliates invested more than \$100 million to capitalize the launch, and in return received distribution rights for DirecTV programming ("DirecTV®") in specific regions of the country. Just three years after project launch, NRTC, its members, and affiliated companies market and distribute up to 175 channels of popular cable and broadcast programming to more than 580,000 rural households equipped with 18" DBS receiving antennas. Additionally, using C-Band technology, NRTC and its members market and distribute packages of satellite-delivered programming, called "Rural TV®" to some 70,000 home satellite dish (HSD) subscribers throughout the country.

II. REPLY COMMENTS

3. Four years ago, when the FCC initially released a Notice of Proposed Rule Making in this proceeding, the Commission concluded that DBS was a nascent industry,^{1/} and should be characterized by a flexible regulatory approach.^{2/} In the NPRM, the Commission was concerned that any implementing regulations not unduly risk the economic viability of DBS providers.^{3/}

4. While it is true that the DBS industry has developed rapidly in the last four years, DBS still has not come close to the level of penetration necessary to compete equally with the incumbent cable providers. As reflected in the Commission's Third Annual Report to Congress on the Status of Competition in the Multichannel Video Programming Distributor ("MVPD") Marketplace, released earlier this year, DBS subscribership has increased substantially to the point that DBS systems have a higher combined subscribership than any other MVPD alternative to incumbent cable systems.^{4/} However, the Third Annual Report also shows -- far and away -- that incumbent cable

¹ Implementation of Section 25 of the Cable Television Consumer Protections and Competition Act: Direct Broadcast Satellite Public Service Obligations, Notice of Proposed Rule Making, March 2, 1993 ("NPRM"), paras. 14, 40.

² NPRM at para. 29.

³ NPRM at para. 14.

⁴ In the Matter of Assessment of the Status of Competition in the Market for the Delivery of Video Programming, CS Docket No. 96-133, Third Annual Report (released Jan. 2, 1997), at para. 38 ("Third Annual Report"). See also Comments of DirecTV at 3.

television operators continue to be the primary distributors of multichannel video programming, that local markets for the delivery of video programming remain highly concentrated, and that structural conditions remain in place for cable operators to exercise substantial market power.^{5/} For DBS to compete effectively against incumbent cable television providers in the MVPD market, the Commission must continue to be vigilant not to thwart DBS growth or viability by prematurely overburdening the industry with regulations.

5. Section 335(b) of the Communications Act of 1934^{6/} mandates that a DBS provider “reserve a portion of its channel capacity, equal to not less than 4 percent nor more than 7 percent, exclusively for noncommercial programming of an educational or informational nature.” In keeping with the Commission’s flexible regulatory approach towards DBS, and to enable DBS to compete effectively in the MVPD market, NRTC agrees with those Commenters urging the Commission to limit to 4% the channel capacity which DBS providers will be required to reserve for noncommercial educational and informational programming. Although a 4% set aside represents the statutory minimum, it is sufficient to provide a substantial level of quality non-commercial educational or informational programming. Moreover, as digital compression technology advances and the DBS industry continues to grow, the absolute number of channels set

⁵ Id. at para. 4.

⁶ See 47 U.S.C. § 335.

aside will continue to increase.

6. In the Further Comments in response to the Commission's Public Notice, as well as in the 1993 DBS Public Interest NPRM and in Comments and Reply Comments in response to the NPRM, the FCC and parties involved in the proceeding were uncertain as to how to measure "channel capacity." Some parties argued that channel capacity should be defined as a certain amount of bandwidth, others argued that it should be based on the amount of video channels the DBS provider actually offers its customers, and still others argued that it should be based on the amount of channels a DBS provider could potentially carry. NRTC agrees with those Commenters arguing that channel capacity should be based on the number of video channels actually offered to the public.⁷ Basing capacity decisions on the number of channels to which consumers subscribe will provide an easily measurable, objective standard while allowing DBS providers maximum flexibility to configure their program packages. The Commission should not include in its channel base calculations audio-only channels, duplicate video channels, channel guides, data or business channels, as these channels are used by the DBS provider to convey information unrelated to public service obligations.

7. DBS providers also should be given the option of satisfying the set aside requirement either by dedicating certain channels to noncommercial educational or

⁷ DirecTV Comments at 6; USSB Comments at 7.

informational programming or through a cumulative hour approach. Section 335 does not prevent DBS providers from selecting the timing and placement of programming. As SBCA noted in its Further Comments, DBS is a national service and generally must provide programming of significant national interest and quality.^{8/} To attract a large number of viewers nationwide, each DBS provider must have the flexibility to tailor its program offerings. Through the cumulative hour approach, a DBS provider would be able to exhibit noncommercial educational and informational video programming equivalent to the amount of time which would have been dedicated on a monthly basis through dedicated set aside channels. This approach would enable the DBS provider to include qualified programming in an attractive package to a national audience.

8. NRTC urges the Commission to define "noncommercial educational and informational programming" broadly so as to enable DBS providers to satisfy the set aside requirement with a wide array of programming. For example, NRTC and others recently launched CHANNEL EARTH™, the world's first news and informational channel devoted exclusively to serving farmers, ranchers and all of rural America. CHANNEL EARTH provides live and late-breaking agricultural news, weather, and livestock and commodity market information. Through daily reports from Capitol Hill, CHANNEL EARTH offers instant updates on trends, politics and policies affecting farmers and ranchers throughout the United States. CHANNEL EARTH also features

rural lifestyle programming that highlights state and local fairs, agricultural university news, and a broad range of specialty programs aimed at meeting the unique needs and interests of rural viewers.

9. The informational and educational programming available through CHANNEL EARTH is exactly the type envisioned by Congress in drafting the 1992 Cable Act. Although a commercial service, the CHANNEL EARTH format mixes informational, educational and entertainment programming of particular interest to rural America. The FCC should permit this type of format to be used to satisfy the Section 335 set aside requirement.

10. To determine which programs qualify for the set aside, NRTC supports those parties that proposed an industry-wide, non-profit "clearinghouse" comprised of representatives of noncommercial educational and informational programmers, as well as DBS providers, to identify programming that would qualify for purposes of meeting the Section 335 obligation.^{9/} A national clearinghouse would simplify the process of complying with the set aside requirements by minimizing costs and administrative burdens.

⁹ See DirecTV Comments at 4; PrimeStar Comments at 19; SBCA Comments at 5; and USSB Comments at 6-7.

III. CONCLUSION

WHEREFORE, THE PREMISES CONSIDERED, the National Rural Telecommunications Cooperative urges the Commission to consider these Reply Comments and to revise its rules in accordance with the views expressed herein.

Respectfully submitted,

**NATIONAL RURAL
TELECOMMUNICATIONS COOPERATIVE**

**Steven T. Berman
Senior Vice President, Business Affairs
and General Counsel**

By: Jack Richards/P.D.
Jack Richards
Paula Deza

**Keller and Heckman LLP
1001 G Street, N.W., Suite 500 West
Washington, D.C. 20001
(202) 434-4210**

Its Attorneys

Dated: May 30, 1997